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LOK SABHA

The following Bill was introduced in Lok Sabha on the 21st November, 1974:—

BILL No. 104 OF 1974

A Bill further to amend the Representation of the People Act, 1951.

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Representation of the People (Amendment) Act, 1974.

(*2*) It shall be deemed to have come into force on the 19th day of October, 1974.

Amendment of Act 43 of 1951.

2. In section 77 of the Representation of the People Act, 1951, in sub-section (*1*), the following *Explanations* shall be inserted at the end, namely:—

'*Explanation* 1.—Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of this sub-section:

Provided that nothing contained in this *Explanation* shall affect—

(*a*) any judgment, order or decision of the Supreme Court whereby the election of a candidate to the House of the People

or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974; 13 of 1974.

(*b*) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement.

Explanation 2.—For the purposes of *Explanation* 1, "political party" shall have the same meaning as in the Election Symbols (Reservation and Allotment) Order, 1968, as for the time being in force.'.

Repeal. 3. The Representation of the People (Amendment) Ordinance, 1974, 13 of 1974. is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

Section 77 of the Representation of the People Act, 1951, provides that the total of the expenditure in connection with an election incurred or authorized by the candidate or his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Elections Rules, 1961, seeks to lay down the maximum election expenses for a parliamentary constituency and an Assembly constituency in respect of various States and the Union territories. Clause (6) of section 123 of the Representation of the People Act has specifically included the incurring or authorizing of expenditure in contravention of section 77 as a corrupt practice, which, if established, would not only vitiate the election, but also result in disqualifying the candidate for a period of six years under section 8A of the said Act.

In the Election Law, the emphasis has been on imposing a curb on an individual incurring expenditure in connection with his election in excess of the prescribed limit. The provision contained in section 77 of the Act is very specific in this respect and the intention that the curb is on the expenditure incurred or authorized by the candidate has found support in the judicial pronouncements on the point. The expression "incurred or authorized" had not been construed so as to bring within its purview the expenditure incurred by a political party in its campaign or by any person other than the candidate unless incurred by such third person as the candidate's agent. In other words, the provisions of section 77 and clause (6) of section 123 have been intended and understood to be restraints on the candidate's election expenditure and not on the expenditure of a political party.

However, in the recent case of Kanwar Lal Gupta *vs.* A. N. Chawla and Others (Civil Appeal No. 1549 of 1972 decided on 3rd October, 1974), the Supreme Court has interpreted the aforementioned expression "incurred or authorized" as including within its scope expenses incurred by a political party or other person referred to above. In view of the effect which such interpretation might have particularly with reference to the candidates against whom election petitions are pending, it became urgently necessary to clarify the intention underlying the provisions contained in section 77 of the Representation of the People Act, 1951, namely, that in computing the maximum amount under that section any expenditure incurred or authorized by any other person or body of persons or political parties should not be taken into account. As Parliament was not in session, the President promulgated on 19th October, 1974, the Representation of the People (Amendment) Ordinance, 1974.

The Bill seeks to replace this Ordinance.

NEW DELHI;
The 7th November, 1974.

H. R. GOKHALE.

S. L. SHAKDHER,
Secretary-General.

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